IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 626 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAVINKUMAR B ACHARYA - Appellant(s)
Versus
DIPAKKUMAR VASANTLAL SHAH & 4 - Defendant(s)

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Appearance :

MR JV JAPEE for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 2, 4,
MR NK MAJMUDAR for Defendant(s) : 3,
None for Defendant(s) : 5,
NOTICE SERVED for Defendant(s) : 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5,5.2.6

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/09/2006

ORAL JUDGMENT

Leave to amend.

Admit.

At the request of the learned advocates appearing for the parties the matter is taken up for final disposal today itself. Mr. JV Japee, learned advocate appears for the appellant; whereas Mr. NK Majmudar, learned advocate appears for respondent no. 3 Respondents no. 1, 2, 4 and 5 are served but they have chosen not to appear through any advocate or in person.

2. Present appellant is original opponent no. 2 of M.A.C.P. No. 1652/1989 and its allied matters. These claim petitions were filed by the original claimants before the Motor Accident Claims Tribunal at Mehsana for compensation on account of the injuries received by them in a vehicular accident which took place on 4th October, 1989. It was around 10.00 p.m that the rickshaw owned by appellant and driven by original opponent no. 1 bearing registration No. GRW 3722 dashed with another rickshaw bearing registration No. GRO 262. The claimant of M.A.C.P. No. 1652 of 1989 was travelling in rickshaw bearing registration no. GRO 262, which had turned turtle on account of impact and the claimant i.e Dipakkumar Vasantlal Shah, who is respondent no. 1 in this appeal, sustained injuries on the legs as well as on the head. He claimed Rs.1,00,000/= for compensation. The Tribunal, on the basis of the evidence led before it, arrived at a conclusion that it was the driver of rickshaw owned by appellant no. 1, who was negligent and rash while driving the rickshaw and as a result of the same, the accident occurred. The Tribunal also determined the compensation which could be awarded to respondent no. 1 at Rs.60,000/=. The Tribunal also accepted the plea of respondent no. 6 – Insurance Company that its liability was limited i.e to the extent of Rs.50,000/=.

3. The appellant has, therefore, approached this Court to challenge the judgment and award holding the driver of the appellant guilty of 100% negligence and rashness. It is submitted by Mr. Japee and it is also averred in

the appeal that the Tribunal committed error in holding that driver of rickshaw owned by the appellant was fully negligent and on account of his negligence the accident occurred. Mr. Japee has drawn my attention to observation made by the Tribunal in para. 17 of its judgment wherein it is stated that if both the drivers had driven their respective vehicles at a slow speed, on their correct side, the accident would not have occurred and has submitted that in view of this observation, it is clear that the other driver was also equally negligent. On the other hand, Mr. Majmudar, learned advocate for respondent no. 3 has fully supported the judgment of the Tribunal. However, after perusing the entire judgment and also the panchnama of the scene of accident, the submission of Mr. Japee cannot be accepted in toto. It is true that the road at the place is of 12 feet width. It is also on record that it had rained that night and it was not possible for the drivers to take their respective vehicles on the shoulders of the road because of the slippery mud and water. In view of the same, it was the duty of driver of both the vehicles to see that they steered each other safely and for that reason ought to have exercised due care and caution, especially when it was night time. But from the discussion contained in the judgment of the Tribunal and in particular the aforesaid observation, it appears that the driver of rickshaw bearing registration no. GRO 262 could also be held negligent atleast to the extent of 20%. It is also an admitted position that rickshaw bearing registration no. GRW 3722 dashed with the other rickshaw on the rear side i.e near the portion of the seat meant for the passengers. But there is no cogent and reliable evidence as to how it dashed with it on the rear portion. May be that the other driver was not rash but there appears to be some negligence on his part also because he would have taken the vehicle slightly more on the left hand side on the tar road itself. The record contains the panchnama of scene of the accident, but unfortunately the vehicle of the appellant was removed from the place because it had carried the injured persons to the hospital. In view of the same, the exact spot of collision and the position of rickshaw of the appellant are not on record and for that reason, some benefit of doubt should be

given to the appellant's rickshaw driver. Considering these circumstances, the finding of the Tribunal holding the driver of the appellant, who is respondent no. 2 herein, 100% negligent is required to be reduced to 80% and 20% negligence to be attributed to the driver of other rickshaw, who is respondent no. 4 in this appeal. The award of the Tribunal is modified to the aforesaid extent. The appeal is therefore, partly allowed with no order as to costs.

R & P to be retransmitted to the Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.